

Remarks

Claims 35-70 are pending in this Application. Claims 46-50 and 56-59 have been withdrawn (and remain eligible for rejoinder). However, it is respectfully pointed out that the Examiner has not clearly set forth the reasons why the claims withdrawn from consideration are not readable on the elected invention.

In the Office Action mailed March 14, 2008, the Examiner required a restriction of claims under 35 U.S.C. §§ 121 and 372. The claims were said to be directed to one of three groups of inventions: Applicants provisionally elected with traverse Group I claims (Claims 35-45, 51-55 and 60-70 directed to a method of making Ca silicate hydrate using suspension agent) for further prosecution. The remaining claims were withdrawn. Reconsideration and withdrawal of the requirement for restriction was and is again requested on the grounds that the Examiner has provided no substantial reason why the claims withdrawn are not readable on the elected invention. For example, no classification of the claims or evidence that there are no corresponding technical features in the groups of inventions have been provided by the Examiner. Applicants previously remarked that the withdrawn claims did include a corresponding technical feature with the elected claims. Group III claims include overlapping technical features of contacting and reacting a calcareous material with siliceous material, a suspension therefrom, and producing calcium silicate hydrate. Claim 50 (Group II), as amended, provides for a calcium silicate hydrate produced by the method of Claim 35 (Group I).

In view of the above, Applicant again traverses the requirement for restriction pursuant to 37 C.F.R. 1.143.

In addition, Applicants respectfully submitted that for examination purposes the restriction requirement was not proper. In accordance with MPEP 803, "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." Yet, the Examiner has not explicitly stated the burden and provided only a potential list of reasons that may apply without any supporting facts (see page 3 of the Office Action

mailed March 14, 2008). Applicants again submit that there must be a submission of factual evidence on the record provided by the Examiner. To this end and in view of the remarks above, Applicants respectfully submit again that a restriction is not required for examination purposes.

In the Office Action mailed November 7, 2008, the Examiner stated that claims were directed to more than one species of the generic invention. It was requested that a specific gel forming agent be elected for examination, selected from amorphous silica, diatomaceous earth, silica fume, clay, cellulose pulp or mixtures thereof. Applicants elect amorphous silica and submit that all claims (Claims 35-59) are readable on the elected species.

Conclusion

Applicants respectfully submit that the Application is in condition for allowance and earnestly seeks allowance of the claims provided in the Listing of Claims beginning on page 2 of this paper.

Should the Examiner have questions, comments, or suggestions in furtherance of prosecution of this Application, please contact Applicants' representative at 214.999.4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review the Application or this Amendment if the Examiner believes that such an interview would assist in advancement of this Application.

A Petition for Extension of Time and the appropriate fees are submitted with this response. No additional fees are believed to be due with this submission.

To the extent that fees are required with this response, the Commissioner is hereby authorized to charge payment of said fees to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 131279-1039.

In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicant respectfully requests that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account referenced above. Please credit any overpayments to this same Deposit Account.

This is intended to be a complete response to an Office Action mailed November 7, 2008. This Amendment has been submitted electronically.

Please direct all correspondence to the practitioner listed below at Customer No. 60148.

Respectfully submitted,

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